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13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

15

16 STARDOCK SYSTEMS, INC.,

Case No. 4:17-CV-07025-SBA (JCS)

17 Plaintiff,

**DEFENDANTS AND COUNTER-
CLAIMANTS PAUL REICHE III AND
ROBERT FREDERICK FORD'S
RESPONSE TO STARDOCK SYSTEMS,
INC. AND VALVE CORPORATION'S
REQUEST FOR EMERGENCY
TELEPHONIC CONFERENCE**

18 v.

19 PAUL REICHE III and ROBERT
FREDERICK FORD,

[DISCOVERY MATTER]

20 Defendants.

21
22 AND RELATED COUNTER-CLAIM.

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24 Defendants and Counter-Claimants Paul Reiche III and Robert Frederick Ford ("Reiche
25 and Ford") hereby file the following response to Plaintiff and Counter-Defendant Stardock
26 Systems, Inc.'s ("Stardock") and Counter-Defendant Valve Corporation's ("Valve") Request for
27 an Emergency Telephonic Conference (Dkt. 107).

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2635.000/1371836.1

Case No. 4:17-CV-07025-SBA (JCS)

DEFENDANTS REICHE/FORD'S RESPONSE TO STARDOCK/VALVE'S REQUEST FOR EMERGENCY
TELEPHONIC CONFERENCE

1 Stardock's Motion for a protective order staying party depositions for another two months
 2 and seeking to delay trial of this action for another seven months (Dkt. 106) is just latest in a long
 3 line of tactics intended to delay resolution on the merits and run up the costs and fees of this case.

4 As the Court knows from the telephonic conference held on December 4, 2018, Reiche and
 5 Ford's counsel repeatedly requested deposition dates for Stardock's witnesses from the summer
 6 through November 2018, and Stardock's counsel repeatedly refused to provide any. *See* Dkt. 92.
 7 Thus, Reiche and Ford's counsel sought the Court's assistance (*id.*), and at the December 4
 8 telephonic conference, the Court ordered Stardock's counsel to meet and confer and provide
 9 deposition dates for its witnesses at a meeting to be held on December 6, 2018. During and
 10 shortly after that meeting, counsel for the parties agreed to the following schedule for depositions
 11 of Stardock's and Valve's witnesses:

- 12 • Jan. 8, 2019 – Valve 30(b)(6) witness in Seattle, Washington
- 13 • Jan. 10, 2019 – Kevin Unangst (former head of marketing of Stardock) in Washington
- 14 • Jan. 23, 2019 – Derek Paxton (VP of Stardock) in Michigan
- 15 • Jan. 25, 2019 – Brad Wardell (owner and President of Stardock) in Michigan
- 16 • Jan. 29, 2019 – Patrick Shaw (lead producer of Star Control: Origins at Stardock) in
 17 Michigan

18 The first two depositions proceeded in Seattle, Washington, and the third deposition
 19 proceeded in Ann Arbor, Michigan, as scheduled. However, on January 24, 2019, when Reiche
 20 and Ford's counsel was already in Michigan and finishing preparing for the depositions of Mr.
 21 Wardell and Mr. Shaw, Stardock's counsel:

- 22 a) Notified Reiche and Ford's counsel that notwithstanding Stardock's repeated
 23 claims that it had already produced all documents responsive to Reiche and Ford's
 24 requests from months before, Stardock had just "found" a few hundred more
 25 responsive documents; and
- 26 b) Asked to reschedule Wardell's and Shaw's depositions for dates in February to
 27 give Stardock sufficient time to produce and Reiche and Ford's counsel sufficient
 28 time to review such documents.

1 The parties' counsels agreed to the following:

- 2 1) Stardock would produce all remaining responsive documents by Feb. 1, 2019;
- 3 2) The deposition of Mr. Wardell would be rescheduled for Feb. 11, 2019 in
- 4 Michigan;
- 5 3) The deposition of Mr. Shaw would be rescheduled for Feb. 13, 2019 in Michigan;
- 6 and
- 7 4) The deposition of Gary Perlmutter, Stardock's counsel who handled the Atari
- 8 bankruptcy through which Stardock claims to have acquired certain rights to Star
- 9 Control, would be set for Feb. 14, 2019 in Michigan.

10 Unfortunately, Stardock failed to comply with the parties' agreement and has continued to
 11 flout its discovery obligations.

12 First, Stardock failed to produce its remaining responsive documents by Feb. 1, 2019.
 13 Instead, Stardock produced what we understand is approximately 3,000 documents, ten times what
 14 its counsel previously disclosed, and 30,000 audio files around 4:40 pm on Feb. 5, 2019, less than
 15 a week before the rescheduled depositions. Due to the size and nature of this production, Reiche
 16 and Ford's counsel have still not been able to review it.

17 Second, on Feb. 6, 2019, Stardock moved for a protective order to stay the aforementioned
 18 depositions purportedly based on the realization that there are another 10,000 responsive emails
 19 that Stardock still has not produced. *See* Dkt. 106.

20 Stardock has already delayed depositions of its personnel in this case for over half a year,
 21 and its continuing failure to comply with its discovery obligations has cost Reiche and Ford
 22 significant fees and costs of having counsel prepare and travel to Michigan for depositions that
 23 were then rescheduled. Indeed, Reiche and Ford's counsel is currently scheduled to board a plane
 24 to Michigan for the rescheduled depositions in just over 48 hours.

25 Reiche and Ford suspect that the real reasons for Stardock seeking more delays are to give
 26 it time to engage in even more procedural antics intended to further delay and increase the cost of
 27 bringing this case to resolution, e.g. seeking to reopen the Atari bankruptcy and/or to compel

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1 arbitration and/or add more claims for breach of the long-expired license agreement between
2 Reiche and Accolade, the original publisher of the Star Control games.

3 Reiche and Ford agree that an emergency phone conference with Magistrate Judge
4 Westmore is warranted, and their counsel is available anytime later today (Feb. 7, 2019) or
5 tomorrow (Feb. 8, 2019). But to the extent that the Court considers Stardock's request to once
6 again delay depositions in this case, Reiche and Ford respectfully request that the Court also order
7 that all further depositions of witnesses affiliated with Stardock take place in San Francisco rather
8 than Michigan, and order sanctions against Stardock for the fees and costs associated with Reiche
9 and Ford's counsel's preparations for and trips to Michigan for depositions.

10

11 DATED: February 7, 2019

BARTKO ZANKEL BUNZEL & MILLER
A Professional Law Corporation

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By: /s/ Stephen C. Steinberg
Stephen C. Steinberg
Attorneys for Defendants and Counter-Claimants
PAUL REICHE III and ROBERT FREDERICK
FORD

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PROOF OF SERVICE

Stardock Systems v. Paul Reiche III and Robert Frederick Ford
U.S. District Court, Northern District of California, Case No. 4:17-CV-07025-SBA

At the time of service, I was over 18 years of age and not a party to this action. My business address is One Embarcadero Center, Suite 800, San Francisco, CA 94111.

On February 7, 2019, I served a true copy of the following document(s) described as **DEFENDANTS AND COUNTER-CLAIMANTS PAUL REICHE III AND ROBERT FREDERICK FORD'S RESPONSE TO STARDOCK SYSTEMS, INC. AND VALVE CORPORATION'S REQUEST FOR EMERGENCY TELEPHONIC CONFERENCE** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on February 7, 2019, at San Francisco, California.

/s/ Terry Ingroff
Terry Ingroff

SERVICE LIST

Stardock Systems v. Paul Reiche III and Robert Frederick Ford
U.S. District Court, Northern District of California, Case No. 4:17-CV-07025-SBA

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